

Law School Toolbox Podcast Episode 75: Learn about Structured Negotiation and Disability Rights Law (with Lainey Feingold)

Alison Monahan: Welcome to the Law School Toolbox Podcast. Today we're really excited to have author and attorney Lainey Feingold here with us. She is a long-time disability rights lawyer and she's written a new book that we will be talking about called "Structured Negotiation – A Winning Alternative to Lawsuits" that was just published by the ABA. So today, your Law School Toolbox Host is Alison Monahan, and normally I'm here with my co-host Lee Burgess and together we're here to demystify the law school and early legal career experience so that you'll be the best law student and lawyer you can be. We're the co-creators of the Law School Toolbox, Bar Exam Toolbox, and the Catapult Career Conference. I also run the Girls Guide to Law School. If you enjoy the show, please leave a review on I-Tunes and if you have any questions, don't hesitate to reach out to us. You can always reach us via the contact form on LawSchoolToolbox.com and we would love to hear from you. With that let's get started.

Alison Monahan: Welcome back. Today we're very excited to have attorney and author Lainey Feingold here with us. She is a long-time disability rights lawyer and has developed a technique called structured negotiation. That's the subject of her new book "Structured Negotiation – A Winning Alternative to Lawsuits". This was just published by the ABA and we'll be talking about how you can get yourself a copy. I read it, it's very interesting. So welcome Lainey. To start off why don't you give people a quick overview of your background including how you became involved in this disability rights work.

Lainey Feingold: Sure. First of all thanks for having me. I'm excited to have this conversation with you. Yeah, I graduated from Law School in 1981. I went to Hastings in San Francisco, and when I graduated I really wanted to be a Union Side Labor Lawyer and I wasn't able to get the job I wanted right away which I know will resonate with many of our listeners. And you know what it's great, I was just talking to a friend this morning, it's kind of nice to be 60 because you can look back and you can see that a career takes twists and turns as mine certainly did. So I went to work for this government for a year a half until I could get the union side labor job I wanted and I did it for five years and I realize you know what and I don't really like this. This was my whole goal of going to law school and all the work and internships and jobs I did while I was in law school. So I switched over a

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private civil rights firm and from there I ended up at a disability rights non-profit and there I have my own practice and I've had it for 20 years.

Alison Monahan: You know that's really interesting I think that definitely will resonate with a lot of people. But if not necessarily being able to get the job and then finding out that you got the job and it's not really what you thought the job was going to be. So I'm actually curious to drill down on that just a little bit. I mean tell me a little bit more about sort of why you thought this was going to be a good fit initially, the union side stuff and then you found it wasn't like was it the work? What was it that you found wasn't what you thought you would like to do.

Lainey Feingold: Well first I'd have to say I liked it at the beginning so over time it felt that the work that I was doing was mostly representing individual workers in unions who had disciplinary issues which is an important issue for workers in unions. But I think when I went into it I had this more idealized view that I was going to be like on the front lines of big issues...

Alison Monahan: Right.

Lainey Feingold: You know making big changes. You know I love the people I work with and I'm still friends with many of them today, but the actual day to day work didn't really mesh with my idea of the work I was doing.

Alison Monahan: Um-huh. And it sounds like you had explored the option pretty thoroughly before you got the job. I mean this wasn't like you graduated and just randomly decided to do this.

Lainey Feingold: Yeah that's true, I worked for several different union side labor firms in San Francisco during the summers and also during the school year and I had in fact Alison this is how we met, we connected through Twitter because when I was a second year law student I was chair of the Program Committee of the Women in the Law Conference that was a prior incarnation to a current women in law conference and in that job which was an unpaid job I met so many women lawyers around the country and really had exposure to a lot of difference types of law that women were doing at that time.

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Alison Monahan: Um-huh. Yeah, I think it so interesting. I think it's the same thing for a lot of people who take these firm jobs. It's like okay you were there for the summer and you thought this was going to be so exciting and your cases were going to be on the front page of the paper and then maybe sometimes they are but I think for a lot of people I think for a lot of people, you know once you get into that a couple of years into it, you know a lot of people sort of realize okay this is either not what I thought or it is sort of what I thought but it's not for me. I think that's a very telling story regardless of what type of work you do in the law.

Lainey Feingold: Absolutely. Honestly, I think it's a telling story for any kind of work you do.

Alison Monahan: Well true.

Lainey Feingold: Yeah, I mean both my daughters are teachers. You know there's the idea of being a teacher versus the actual work of being a teacher.

Alison Monahan: I think that's definitely one of those professions where people get into it and go wow this is really not what I find I'm going to spend my time doing.

Lainey Feingold: Yeah one of the things I always tell people when they say what should I do in my career? I'm like you're not really deciding your whole career your deciding what are you going to do right now that seems like a fit and be sure to keep evaluating it. And make sure it stays a fit. And if I hadn't done that I would not have been in a situation to have a real interesting law practice that caused me to write a book about it.

Alison Monahan: Right I think that's right. I mean that's what we tell people like look you're not deciding the rest of your life right now. You just have to sort of take a step that seems like maybe it could work out for you and if it's not working figure out where to go from there. The idea of having a five or ten year plan I think for most people coming out of law school. It's just not that realistic. And I think it could put a lot of pressure on people to try to do something that's just not possible.

Lainey Feingold: Absolutely. I never had a five or a ten year plan.

Alison Monahan: Well good I'm glad to hear that.

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- Lainey Feingold: Or a two year plan for that matter.
- Alison Monahan: I once heard a therapist tell me I had a radically short term time horizon. You basically can't plan more than about three months in advance. And I was like okay well that's useful to know.
- Lainey Feingold: Yeah well I was listening on NPR and someone just wrote a book about what is the meaning of now. It's like a physics book for non-science people.
- Alison Monahan: Interesting.
- Lainey Feingold: How far out do you plan? And what is current?
- Alison Monahan: Right. Well I read your book and it sounds like there's an interesting story in there about ... I mean it sounds like a kind of crazy story. You were fired from a firm the day before you were expecting to make partner? Can you tell me a little bit about that experience?
- Lainey Feingold: Yeah, I thought it was funny that you pulled that out of the book.
- Alison Monahan: I mean it's brilliant. The book has nothing to do with this in case you're wondering. I was just like wow that sounds interesting.
- Lainey Feingold: Yet it was interesting to me too. So I went to the union labor firm and I became a partner there and it was after becoming a partner that I realized it just didn't seem like the right fit. So I went to a Civil Rights firm and I ended up you know thinking I was doing great and on the track and I had a short track because I had been a partner before. Like you said that pretty much the day before I had already talked about the parking space and the new furniture and all this stuff and it was not to be. It was devastating at the time. But the reason it worked its way into the book is because the book is about negotiating without lawsuits and in the last chapter I talk about various qualities that make for good negotiator in my experience and one of them is equanimity – the ability not to get riled by your clients, your opposing counsel. And when I got fired, the person said you know you can't be a partner here because you lack equanimity.

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Alison Monahan: But I thought it was very odd. I mean I've only met you once but you seem like someone who would be pretty even keeled.

Lainey Feingold: Well yeah this is the thing like I how was I then, I've been thinking about that you know. But again, it just you know all the wisdom traditions have this idea, one door closes, another opens, it's the principal in psychiatry. And the reason it's a longstanding idea is because it kind of is true and that's what happened to me.

Alison Monahan: Yeah, I just thought was super interesting. You're like oh yeah I'm picking out my furniture and suddenly it's like actually you're unemployed it's like whoa alright.

Lainey Feingold: That is just how it felt and just how it was.

Alison Monahan: I mean I got cold offer from one of the firms I summered it, which is also like well okay that's weird. That wasn't totally unexpected because I hated them too but you know it is one of those situations where you're like wow alright that was not the way this was supposed to work out. What am I going to do next?

Lainey Feingold: Yeah resilience is a really important trait to have. Especially when you're starting a career. I mean the great Leonard Gowan who you know just died. He has this great song about where the light comes in where the cracks are and if you're open to it for me it's just nothing could have been better than that experience.

Alison Monahan: Exactly in hindsight, not at the moment. None of the things above you have to be forced into these things too. You know that probably wasn't going to end up going all that well. Good thing they decided to reject me suddenly, but at the time it is not necessarily where you are at. Alright, well let's shift gears a little bit and talk about the Structured Negotiation Process. So tell me in a nutshell what is this all about it? And kind of how did you develop it?

Lainey Feingold: Well "Structured Negotiation" is a way to resolve legal claims without lawsuits. So in that way it's an alternative dispute resolution process. It's very direct. So sometimes the parties can bring in a mediator but it's not mediation because there's not always a third party. And the way it developed is when I got fired from that job I ended up in a very short-term position at a disability rights non-profit and

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during that time a blind lawyer called and he wanted access to ATMs and at the time there were no accessible ATMS. And so we're like well, the Americans With Disabilities Act was new, we could file a class action, what should we do? And we hit upon this idea to just write letters to the banks and we wrote to Bank of America, Wells Fargo, and City Bank in the mid-90's. We said you don't have any ATMs that work for blind people. It's a violation of the ADA but rather than sue you, could we sit down and try to find a solution. And at the time there were no accessible ATMs anywhere in the world. And as a result of those letters the banks said yes which was surprising to us because especially as a young lawyer just so prime for the fight assuming the other side is going to say no and give you a fight but they didn't. They said yes and four years later we had written legal agreements with all of them with this brand new technology and my colleagues and I who I worked on the cases with were like whoa I wonder if this would work for other issues. Because we didn't have to depositions, we had joint experts instead of opposing experts and it was just so much more collaborative and cooperative and less stressful. So that's how it started and since then I've used the method in about 75 different cases and other lawyers have used it and you know as I say it's a tool in the tool box it's not the only tool, I'm not saying it's the best tool but lawsuits just can't be the only option for resolving legal claims.

Alison Monahan: Right. I was a litigator so I would definitely agree with that statement in large part. The reality is most lawsuits are not ultimately resolved in litigation. There may be a case but they're not going to jury trials or anything like that I mean basically almost everything settles. I'm just curious, what at the time did you see as the drawback of sort of one of these more typical like alternative dispute resolution options like mediation?

Lainey Feingold: I wouldn't say we saw it is a drawback in some ways it developed organically because when we sent the original letters and in my book I talk about how to write what we call an opening letter instead of a demand letter. I have a lot of suggestions for language changes that is one my favorite parts of the book when I realize like why call people defendants if you don't want them to defend.

Alison Monahan: Right the shift from having a plaintiff to what did you call them?

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- Lainey Feingold: Claimant, we call them claimant.
- Alison Monahan: Right I like the claimant because it makes it clear like oh they have a real claim on this you know. They are not just complaining.
- Lainey Feingold: Yeah. Exactly and so it wasn't like we said "oh we don't want mediation" we just thought we'd try this letter. At the time, we did attach a federal complaint and our letter was very threatening and you know sit down with us. Over the years I've come to realize that it's not only not necessary, but a lot of times it backfires to be so aggressive and threatening in the opening letter and you know in the book, I talk about how to write a letter that is more of an invitation to solve a problem rather than a threat of a legal claim.
- Alison Monahan: Right. And that's one of the things I found most interesting in the different stories you tell in the book, is that, it seems like people really were approaching it more as problem solvers, so often times your clients, you know the claimants, people who had these disabilities or what not would end up going into the lab you know with the ATM designer to talk about what might work. I found that whole thing quite fascinating. Because it's very hard to imagine that happening in a lawsuit context.
- Lainey Feingold: Exactly, and that's really one of the highlights of this process, I think, is that the role the clients have and they can have a bigger role because they're not put in a box of plaintiff. And they're not put into a box of having to have a deposition. You know I kept doing the process and I decided to write the book because I just really feel it's a method that can work in a variety of context and we just have to be confident. I talk about confidence in the book that it's so easy to think oh this isn't going to work, we may as well do a lawsuit. But the truth is lawsuits don't always work out either.
- Alison Monahan: Right there's definitely a high risk on either side and I mean that's why everything settles. My personal theory after going to trial once or twice was that only crazy people go to trial because anyone else is going to settle the situation. I mean do you there's certain types of disputes that are more or less suited for this. I mean would you say there's certain categories of disputes, you're like oh absolutely this would never work, you should never try it.

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Lainey Feingold: Well you know that was something that I wrote many pages of that are not in the book because I had ideas like.... well first of all there's a very important need for lawsuits and in the current political period we're about to enter there's going to be more of a need you know...

Alison Monahan: Right and that's when you need precedent basically right?

Lainey Feingold: Yeah you need precedent, you need courts, I mean like I give... in the book I say you know obviously *Marriage Equality* or *Brown v. Board of Education* there are certain things you want a legal system to speak to. But most cases aren't that. So what I've been saying as people ask me that question now that I'm out talking about the book is it's really up to the readers. You know I tried to create a book where each piece sort of stood on its own on how to write the letter, how to do ground rules. How to exchange information and I'm hoping people will write to me and say "hey you know I tried it in this context and it worked or it didn't work or I tweaked it " so ask me again next year and I'll kind of advance for you.

Alison Monahan: Well I mean I did patent litigation and so I was thinking like could I see this really big system that works in _____. Well it was actually interesting because I think historically the approach that you're talking about was basically more or less what people would end up doing. They had big Company A and big Company B they were in the same industry and they each had a huge portfolio of patents. If one of them got angry with the other, they would basically sit down and figure out okay we'll trade these maybe some money changes hand but you know it was essentially defensive ownership of patents whereas now that's totally shifted where you have the non-practicing entities the trolls that kind of thing and that's really you know what the patent litigation system is essentially about at this point.

Lainey Feingold: Yeah, I mean I write in the book about how it's a process structured negotiation is a process that allows people to preserve relationships even if they happen to have a legal dispute with each other. And I think our profession as a whole has kind of lost the ability to talk directly to each other. We think we need a third party to be in the middle.

Alison Monahan: Father knows best, needs to decide everything for us type of thing?

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Lainey Feingold: Yeah. Yeah that's a good way to think about it. So I'm hoping ... that's why in the back of the last chapter in addition to talking about equanimity I talk about optimism and confidence because I think if you have faith in your ability to problem solve, a lot of times you'll be able to. I mean not always there's going to be you know some cases we can't do it, or bad actors or bad faith or whatever but assuming everyone's trustworthy and in good faith I think there's a lot of times we can solve problems on our own.

Alison Monahan: You know I think that's right I mean when friends come to me you know it's like "I wanna so and so's you know, you're a lawyer, my landlord's being mean to me, or someone's not giving me my security deposit back, you know all these things that I'm sure you have your friends come and ask you to help them with too. But my first instinct in what I usually say in these situations is like "look give them one opportunity to do the right thing you know ask politely for what you want tell them why you think you think you should get this and then like legitimately give them the opportunity to do the right thing. And then if they don't fine. You know you can go to small claims court or whatever. But I don't think you should start there.

Lainey Feingold: Yeah. I agree with you. I mean we do that with our clients even with this process.

Alison Monahan: Um huh.

Lainey Feingold: Because one of the things when you know when you don't have a judge or court rules or civil procedure like we don't have one of the first things we hear from companies are well you should have told us. So we have to be able to say well you know our clients did call your customer service line...

Alison Monahan: Right.

Lainey Feingold: Or you know talk to their supervisor whatever it is and they didn't get any result and they only went to a lawyer because they had to.

Alison Monahan: Right exactly.

Lainey Feingold: I've had to say that a lot.

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Alison Monahan: Well that's the case anywhere I think, you know, I once ended a relationship with a bank that I'd had an account at for something like 17 years because the person on the phone refused to refund some ridiculous fee that they shouldn't have been charging me and I was like look I'm just like I want to be clear about this. You're going to lose me as a customer for 17 years over \$14. It's like yes that's our policy. And I'm like you're telling me there's no one I can talk to who can waive that policy. No, there's nothing we can do. I'm like fine, I'm going tomorrow and I'm closing the account. And I did, I went in I closed the account and of course once I'm in the bank they're like oh no that's not our policy like of course we could waive the fee. We don't want to lose you. It's like no - done. You know like you had the chance to do the right thing here. I believe the guy who told me it's your policy. You're going to waive it, but that's not the point. The point is you shouldn't be doing this.

Lainey Feingold: Well I tell the story in the book of how one of our early ATM clients came to us is because he was blind and the company ...the bank started a policy of charging. It was only \$2.00 but they were charging to go to a teller window to take out money because they were trying to steer people to the ATMs. And blind people couldn't use the ATMs.

Alison Monahan: Yeah I thought that some of the ideas that came up with to for like oh how we are going to solve this problem were pretty funny actually.

Lainey Feingold: Yeah, and so this guy I mean he like left the bank and found a lawyer.

Alison Monahan: Right, I mean what else are you going to do in that scenario. Like okay this is not right. Fine, it's a couple of dollars but this shouldn't be happening.

Lainey Feingold: Exactly.

Alison Monahan: And you also just wonder like did no one think about this?

Lainey Feingold: In terms of the accessibility?

Alison Monahan: Right. Like internally. Did no one or any employee in these banks think like "oh well maybe their people are going to have... you know this is going to have a negative impact on who need to see a teller because we don't let them use the ATM.

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Lainey Feingold: Well fortunately, that is no longer any one's policy.

Alison Monahan: Yeah right.

Lainey Feingold: Yeah well I think part of the issue with disability is that people it's exactly that they don't think of it. I do a lot of work on website accessibility, mobile accessibility and some of it is nobody is thinking when it comes to design. You know, like they put up a video without captioning. They're not thinking about their customers who can't hear the video and need captions.

Alison Monahan: Right. I actually I talked to Hart about your comments about the captia I think it was with the baseball negotiation. Because we had a couple of captias up, John is like I'm sure they have the alternative do you want to hear this? And I went and checked and like one of them didn't. And I was like "oh whoops gotta change this". I used to be a web developer so I should know better.

Lainey Feingold: Well you know now. So that's okay.

Alison Monahan: Right. But I was like well you know at least my small part for the world people could use my ... I think anyone who is blind and using a screen reader should not be able to submit something to me through my contact forms. So if you're listening to this you are welcome to submit comments through our contact form and it should work. If not, let us know. Right so I think the whole process is really interesting about this idea of not having competing experts seemed like a very critical thing potentially. I mean you know obviously in patent cases that's like "the thing". It's like the battle of the experts and you have to jump through all these ridiculous hoops about you know not ever having copies of their report that are saved anywhere. It's just like on and on and on it's like such a waste of time and money.

Lainey Feingold: Yeah, I think that, I tell the story in the book a little bit, that before I was doing this work with blind people I was doing wheel chair access cases and we did a big case with Shell Oil Company on the accessibility of their service stations all over the country. We covered 4,300 stations for wheelchair users. It was a kind of structured negotiations because we wrote the letter, we negotiated a whole deal with them. We ended up filing with their agreement because they wanted class protection. But we were using the experts the way experts are used in litigation and it was just so expensive

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that I really think that's where the idea was hatched. Like you know there's gotta be a better way with experts.

Alison Monahan: Oh because their easily like \$500 plus dollars an hour.

Lainey Feingold: Yeah, so Chapter 8 is all about experts and the stories of some of the experts we used. And the other piece that I realized you know when you write a book you have to really think about things that you take for granted while you're doing the thing. And the clients really get to be experts in this process. Whereas in a regular litigated case they're very sort of what the client thinks is all seen through a filter of well they're the plaintiff and so, or their the defendants, or they have a point of view you can't really trust their expertise.

Alison Monahan: Right this makes it more like an engineering approach you know like let's get in a room and figure out what the end user needs.

Lainey Feingold: Yeah that's how it worked in our cases. But I think that the idea of the joint expert is something that can really carry over to other types of cases where people are really interested in resolving the claim in a cost effective way.

Alison Monahan: Yeah in my experience with as expert it was always like alright what do you need me to say in my report, you know what's are argument here? It's like, in an ideal word, your expert should not be asking the lawyer what your argument is. The expert should be going out and being like oh okay this is what you know ... these are facts or whatever it is. The whole expert world has gotten really warped and twisted.

Lainey Feingold: Yeah totally. I mean when I wrote the book, I interviewed various people who I had used these experts and many of whom became my friends. And until I wrote the book I hadn't really realized well you know they also have been experts in cases. So they could file cases so they can really talk about the different... you know for them the different experience of being in a negotiation where the goal is problem solving.

Alison Monahan: It might not be as lucrative. It's definitely a gravy train if you could be an expert in like a very contested litigation. That is... you know that is going to send your kids to college literally.

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Lainey Feingold: Yeah. But in this way you could be in five structured negotiations at the same time your spending.

Alison Monahan: Right, you might actually be doing something productive for the world instead of you know whatever your lawyer wants you to say basically. Alright, well let's move on to a little bit different topic. So a lot of our listeners are law students and we hear from a lot of people you know the typical story they want to help the world when they decide to go to law school but then they kind of find these goals evaporating you know once they get into this pressure cooker atmosphere that you have at most law schools. So do you have any ideas about what law students can or should be doing if they're interested in working in some alternative type of practice, you know not this sort of traditional, legal litigation firm that sort of life style?

Lainey Feingold: Yeah. I was thinking about that in advance of this and it was that way when I went to law school too.

Alison Monahan: Right.

Lainey Feingold: Honestly. I mean at the time Hastings was a very big law school. I think we had 500 people in our class. I always felt like oh thank God I found my people which were like seven of us or ten of us. And one of the ways we found our people just as an aside is that the Torts Professor on the very first day was trying to teach us what a demurrer is and he said "I don't mean demure like a young lady should be, I mean demurrer" and then several us booed and then we found each other.

Alison Monahan: Wow that's classic.

Lainey Feingold: So yeah I mean I think there's a lot of different ways to practice law and for some reason law schools have gotten into really emphasizing the big law way which is not for everyone.

Alison Monahan: It's not even a realistic option for most people.

Lainey Feingold: Yeah. So you know there's a lot of firms that smaller size firms and non-profits. I mean unfortunately for all of us the federal government is kind of off the table for the next four years that's a way to make a positive impact. But you know what there's people in federal government jobs lawyers I know who have done great work in the last eight years who

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are staying and who are you know going to do what they can do. And so that's an option for some people and I just think you have to hold just really find your center and know what you want to do.

Alison Monahan: Do you have any ideas? Because one of the questions we get a lot is from students saying "look I realize I either don't want a big firm job or I'm not qualified, they're not going to hire me but it seems to be really hard for people to find work in these smaller firms. Either over the summer or after they graduate. Do you have thoughts on how people might go about either building those relationships or finding those jobs?"

Lainey Feingold: That's a good question. I remember when I ... at the time I got fired from the job and I was like what am I going to do now. It's not ideal to be in a contract relationship as a contract lawyer not as an employee and some people can't afford it but if it is an option, and here again is a place where trust comes in to be able to you know have some experience doing just working on one case.

Alison Monahan: Um-huh.

Lainey Feingold: And I know law firms now you know in this economy people... should we really hire a person or do we only need them for a few months and so get involved in local bar associations and I think there's a Facebook page now ever since the election, it's on as Lawyers on The Left but they're changing the name ...

Alison Monahan: Right they just changed the name.

Lainey Feingold: They just changed the name to something more inclusive because not everybody thinks we're on the left and there is like a lot of really interesting people on that.

Alison Monahan: It has more than 100,000 people in it. So...

Lainey Feingold: Yeah, so right now that's the place...

Alison Monahan: Yeah true, I would be like "hey I'm interested in this is there anybody who's looking for help." You know, yeah that's a huge opportunity. They have lawyers for good government now or something at least temporarily.

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Lainey Feingold: Yeah. I don't know, obviously I'm not involved in that. But they're also starting state, you know smaller groups that aren't 120,000 and you know I think if you have an opportunity to volunteer a little bit during law school. Get a feel for other organizations. I remember when I was in law school did that women in the law thing I also had the opportunity to be on Law Review at Hastings. And I couldn't do both and the lawyers who were running the Women in Law Conference were like you should do the Women in Law Conference it's going to give you connections and that's what really matters. So I did not do the Law Review. I did do the Women in Law Conference and I met hell of a lot of people that I still know now.

Alison Monahan: Right. I think that's right. I mean people think oh I have to do Law Review and I like I made Law Review and hated it and did it and probably wasted a ton of time that I could have been doing something more productive with. So you know getting clear on what makes sense for you and not just being like "oh well everybody tells me I have to do Law Review" or tells me I have to do moot court. It's like people need to make these decisions about what actually makes sense for them.

Lainey Feingold: And also I remember being in law school and thinking ... and I worked for different organizations in private firms like almost every semester because the key is getting to know a lot of different people.

Alison Monahan: Um-huh. I think that's particularly key in any I know who's done people interest work of any type has said that's absolutely the key. And people hire you based on your work and your relationships they're not hiring based on you know where you went to school or something like that necessarily like that or your grades. My law school roommate was actually a public interest person and she stopped looking at her grades after I think the first year. Because she was like you know what I'm here to learn as long as I pass I really don't care. So she had someone else look at them to make sure she passed and they gave her a thumbs off every semester and like "yup you passed" don't worry about. She's like great still don't need to worry about this.

Lainey Feingold: Yeah I think the key thing is to make sure you have a few other people who think like you do. And you know the National Lawyers Guild is still out there and the ACLU and

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there's a lot of us. If anybody is listening to this is interested disability rights they should certainly contact me because we have a whole bar association, disability rights, we have a law student. Part of that the National Employment Lawyer's Association, it's a group of plaintiff's employment lawyers a lot of whom have firms you know they're not non- profits but they're smaller firms and they offer a different way to practice law. So there's a lot out there.

Alison Monahan: And do you have any suggestions for a law student or young lawyers who are interested in possible striking out on their own in creating a firm?

Lainey Feingold: Well one thing I'll say about that I actually work out of my house and I have for 20 years. And along the way I thought "Oh I should have an office". And I thought really should I pay rent for an office?

Alison Monahan: Right.

Lainey Feingold: And especially you know with We Works and so many different work sharing situations I think you really got to keep your cost down. That is the trick. And really think hard about is this cost necessary or do I just think it looks good. Another secret, not secret, but another reason I've been able to work as I do is co-counseling relationships. So almost all the cases that I talk about in the book I have done with co-counsel. Either in firms all the beginning cases were with the Goldstein, Borgen Dardarian and Ho Firm which is an Oakland Civil rights firm. One of those kinds of firms that I was just talking about that you know is a law firm and they litigate cases on the plaintiff's side. Or non-profits. I've only... of all the cases in my book and all the cases I've done has really only been two or three that I've just done by myself.

Alison Monahan: That's interesting. Why is that?

Lainey Feingold: Well partly because I work at home without a staff. Um and I have a thing in the book about co-counsel because it's... you know when you're in a firm you have your other partners, you have your associates or whatever to bounce ideas off of. But we can do that especially you know with e-mail and so much... I mean we're having this great conversation where like two times from each other.

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Alison Monahan: Freezing Slack a lot, Entrello and things like that. You know I think even a lot of some of these Facebook groups are taken off face book and like going into Slack because it's actually more secure, and just easier to use.

Lainey Feingold: Yeah, you just don't, I mean honestly in many of these negotiations people read about in the book, I never met anybody on the ... I don't like to term "other side" but never met him. The whole thing was phone and e-mail.

Alison Monahan: So what do you call that your code negotiators or something like that.

Lainey Feingold: Yeah.

Alison Monahan: Negotiating partners.

Lainey Feingold: Yes I think people who are interested in striking out on their own just really have to take advantage of all technology offers. And the co-counseling arrangements and you know that may be hit or miss at the beginning because you need to be in sync with the people you work with. I think that's one of the things I've learned along the way. It's not just the issues you want to work on it's the people you're working with.

Alison Monahan: And I think it's also how you work and how much you work and how much control you have over the work that you're doing and all those kind of things that people don't necessarily give that much thought to until you're suddenly in a situation where you're overworked and you have no control and that kind of thing like "oh I don't really mind the work I just hate everything else about this."

Lainey Feingold: Well that's how I ended up at home. I had, I was working so when I got fired from the job that I eventually ended up at this disability rights non-profit. And I was there for four years and one day I woke up and I said "Oh my God my kids are 10 and 7 and like I never seen them". And it just wasn't tenable for me. So I decided to I'm going to give it a go and start this home office. I didn't really know how it was going to work out and now closer to the end of the story I can see that it was you know the perfect leap at the time.

Alison Monahan: I think there's a lot to be said for you running your own thing, controlling your own schedule, controlling who you work with all those kind of things and certainly I realize I

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was a pretty terrible employee and I am a much better person to be in charge.

Lainey Feingold: That's another thing about structured negotiation that I think I hope is clear in the book. I couldn't figure out how to like a write a whole chapter about it but you know the legal profession you file a lawsuit you really lose a lot of control.

Alison Monahan: Oh yeah.

Lainey Feingold: The judges, the court orders, the scheduling conferences, you know hopefully people are civil and they'll be a little flexible. But basically you're just giving it over to rules that are

Alison Monahan: Pretty arbitrary.

Lainey Feingold: Pretty arbitrary and pretty old. So in structured negotiation it's one of the hard parts is to keep the cases going without those rules and one of the best parts is that you don't have those rules and you can keep the cases going on your own.

Alison Monahan: Yeah and that's a topic I wanted to touch on at least briefly before we wrap up. So you say in the book that there's no one sort of personality type that's necessarily best suited for this type of structured negotiation. I mean if somebody's interested in this idea and they want to explore it further what are some skills that you think are really critical for these things like keeping the case moving you know when you don't have a judge or deadline looming.

Lainey Feingold: Yeah that it was the last chapter is about. It's called the "The Structured Negotiation Mindset". And in some ways it's the most important chapter in the book but in other ways I didn't want to scare people off.

Alison Monahan: I found it the most interesting chapter to be honest.

Lainey Feingold: Well you know it's funny Alison when I was deciding whether I really wanted to really write a book I said okay I got to write one chapter and the chapter I wrote was that one.

Alison Monahan: Oh interesting.

Lainey Feingold: In different forms. But that was the thing I was most interested in and the things I talk about in the chapter are

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patience, equanimity like we mentioned, trust – not jumping to conclusions, not making assumptions and these are all things that when we're trained as a lawyer we're kind of trained to be suspicious like what if this happens, what if that happens? And we get ahead of where we really are. So I talk about that in the book and I do agree that you don't need to be a certain personality because I think these things can be learned. Just like when we go to law school or when we're in certain kind of practices we learn to be skeptical.

Alison Monahan: Right... so it seems like...

Lainey Feingold: Anxious.

Alison Monahan: Lawyers have to kind of unlearn some of things they might have picked up in law school for this to be really be a successful approach.

Lainey Feingold: Yeah unlearner or a compliment because one of the things I realized in writing the book is you can be a very good advocate and be a peace maker. They're not mutually exclusive.

Alison Monahan: Well I think some of it is you can be a strong advocate without being a jerk.

Lainey Feingold: That's for sure. I think I knew that already.

Alison Monahan: A lot of people in the legal profession seem to forget that. That's like no just because you're being a jerk doesn't mean you're actually advancing your client's position very firmly here.

Lainey Feingold: Yeah or being aggressive or ... you know there's lots of ... you know in the book I talk about how having the mindfulness practice. You know it's not required but it can help you develop some of these traits and I've been for several years to the lawyer mediation retreats they have out here in California and they have them all over the country really. And I've heard young lawyers say and I just don't know if I can do this profession because it doesn't feel it meshes with who I am inside. And there's lots of different ways to be lawyer and I'm hoping that this book will just make one more way available to people.

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Alison Monahan: I think it's definitely worth a read. So let's ... our final question how can people learn more about your work and where can they get the book.

Lainey Feingold: Uh yeah. So my website is lflegal.com my initials lflegal.com and you'll find right there this forward/book you can get right there and it will tell you how to order it. Right now it's available only on the American Bar Association website. Eventually it will be on Amazon but not until sometime in the probably first half of next year. So you can get it from the ABA, you can read what people are saying about it. I have a section used to be called Advance Praise but people are saying that so I changed it to Praise. I have the Table of Contents up, I have some excerpts so yeah I hope people read it and let me put out my e-mail here because I'm happy, you know I'm an elder now so I'm happy to talk to people on the path and share what I can. So you can reach me through the website lflegal.com there's a contact form or my e-mail lf@lflegal.com.

Alison Monahan: Okay we can put that all into the show notes as well for easy reference. Well with that unfortunately we are out of time I can attest the book is very interesting it is also very readable and I think it's very actionable I like the fact that you had sort of really specific ideas about you know how to make your opening letter and that kind of thing that I think could really be helpful to anyone who is interested in this topic or even just interested in you know... I mean I thought a lot of the ideas you had for the opening letter could probably go into demand letters as well. So if you enjoyed this Episode of the Law School Toolbox Podcast, please take a second to leave a review or rating on iTunes we would really appreciate it and be sure to subscribe so you don't miss anything typically our new episodes come out on Monday. If you have any questions or comments, don't hesitate to reach out to Lee or Alison at lee@lawschooltoolbox.com or Alison@lawschooltoolbox.com or you can always contact us via our website contact form at Lawschoolbox.com. Thanks for listening, we'll talk soon and a big thank you to Lainey for sharing her expertise.

Lainey Feingold: Thanks Alison.